State of California

Board of Equalization
Legal Division-MIC:82
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M e m o r a n d u m

To : Mr. David J. Gau, Chief
Policy, Planning & Standards Division

Date: August 16, 1999

From : Janet Saunders
Tax Counsel

Subject: **Parent-Child Exclusion and Life Estates**

You have inquired in your memorandum of March 16, 1999, as to the application of the exclusion from change in ownership set out in Revenue and Taxation Code section 63.1[1]. You have received a number of inquiries and ask that an annotation be prepared. We agree with your conclusion that the grandparent/grandchild transfer described below is not excluded from change in ownership and have attached a proposed annotation. The fact situation is as follows:

> An owner of property (Grandmother) executed a grant deed in 1987 reserving a life estate for herself. The remainderpersons were her daughter (Daughter) as to an undivided ½ interest and her daughter's children (Grandchildren) as to the other undivided ½ interest. In 1994, Daughter died, leaving her estate by will to her husband (Stepfather).
>
> Grandmother died in October, 1996, and her life estate terminated. The property passed from the Grandmother to the Stepfather (½ interest) and to the Grandchildren (½ interest). Stepfather subsequently granted his ½ interest in the property to the Grandchildren.[2]

Based on the above facts, you ask if the transfer from Grandmother to Grandchildren falls within the grandparent/grandchild exclusion, considering that Stepfather is still alive and has not remarried. As explained below, it is our opinion that the exclusion does not apply. The exclusion applies only if the children of the grandparent are deceased (section 63.1, subd. (a)(3)(A)). Stepfather is considered a "child" of Grandmother (section 63.1, subd. (c)(3)(C)); he is not deceased and therefore, the exclusion does not apply.

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[1] All statutory references are to the Revenue and Taxation Code unless otherwise specified.
[2] The transfer from Grandmother to Stepfather and the transfer from Stepfather to Grandchildren would be excluded from change in ownership under the parent/child exclusion.

Analysis

Section 60 defines a "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Pursuant to Proposition 13, real property is subject to reassessment when there is a change in ownership. One relevant exclusion from change in ownership is the parent/child exclusion. Proposition 58 added subdivision (h) to section 2 of Article XIIIA of the California Constitution and excludes from change in ownership the principal residence and the first $1 million of the full cash value of all other real property of an "eligible transferor" to an "eligible transferee" in the case of a purchase or transfer between parents and their children.

On March 26, 1996, the voters of California passed Proposition 193, which amended section 2(h) of Article XIII A of the California Constitution to extend the parent/child exclusion to grandparent/grandchild transfers in certain circumstances. Subsequently, the Governor signed SB 1827 (Chapter 1087, Statutes of 1996), which took effect on January 1, 1997. A portion of this bill amended section 63.1 to reflect the grandparent/grandchild provisions of Prop. 193.

Section 63.1, subd. (a)(3)(A) provides that the exclusion from change in ownership applies between grandparents and grandchildren if the parents of the grandchildren are deceased. That subsection excludes from change in ownership:

> . . . the purchase or transfer of real property . . . between grandparents and their grandchild or grandchildren, if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of purchase or transfer. (Emphasis added.)

The term "middle generation" has been used in Letter to Assessors No. 97/32 to refer to individuals such as Daughter and Stepfather, as they are considered "children" of grandparents and "parents" of Grandchildren. As explained therein, the grandparent/grandchild exclusion applies to transfers when there is no "middle generation."

In the facts you describe, the Daughter was in three relationships; she was the child of the Grandmother, the spouse of the Stepfather and the parent of the Grandchildren. The Stepfather is also in three relationships; he is the son-in-law of the Grandmother, the stepparent of the Grandchildren and the widowed spouse of the Daughter. For purposes of this exclusion, he is considered to be the "child" of the Grandmother. Section 63.1, subdivision (c)(3)(C) defines "children" to include:

> Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed

> to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law. (Emphasis added.)

When the marriage between Stepfather and Daughter (i.e., the daughter of Grandmother) was terminated by Daughter's death, Stepfather became the Grandmother's surviving son-in-law; as he has not remarried, he remains a "child" of Grandmother pursuant to section 63.1, subd. (c)(3)(C). He is not deceased and thus, the threshold requirement of section 63.1, subd. (a)(3)(A), that the "middle generation" is deceased, is not met.

Please note that there are various other requirements for this exclusion not addressed in this letter. It is necessary that the facts of any particular situation be considered with regard to section 63.1 in its entirety. Please note also that it is the determination of the county assessor as to whether all the conditions of the exclusion have been met.

Also, please note that Annotation 493.0120, "Son-in-Law," is related to your question. A copy of the annotated letter is attached.

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Attachment

cc: Mr. Richard C. Johnson (MIC:63)
Ms. Jennifer L. Willis (MIC:70)